IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

FAO.No. 230 of 2005()

AGAINST THE ORDER DATED 07/06/2005 IN IA. 829/2005 AND 984 /2005 IN AS.162/2004 of ADDL.SUB COURT, IRINJALAKUDA
O.S.No.745/2002 OF MUNSIFF COURT KODUNGALLOOR.

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APPELLANTS/RESPONDENTS/APPELLANTS/DEFENDANTS 4 AND 5:

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1. KANNAPPAN, AGED 56 YEARS,
   S/O. KOZHEKKATT AYYAPPAN, LOKAMALLESWARAM VILLAGE,
   KODUNGALLOOR TALUK.

2. SANTHA, W/O. KANNAPPAN,
   LOKAMALLESWARAM VILLAGE, KODUNGALLOOR TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS/PETITIONERS/RESPONDENTS/PLAINTIFFS:

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1. RAJAMMA, W/O. KOZHEKKATT SUBRAMANIAN,
   LOKAMALLESWARAM VILLAGE, KODUNGALLOOR TALUK.

2. SUBRAMANYAN, S/O.KOZHEKKATT AYYAPPAN,
   LOKAMALLESWARAM VILLAGE, KODUNGALLOOR TALUK.

BY ADV. SRI.RENJITH THAMPAN
SMT.P.A.ANITHA

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 18/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON IA NO.3017/2005 IN FAO NO.230/2005

DISPOSED OF VIDE JUDGMENT IN FAO

18/12/2007 Sd/-K.PADMANABHAN NAIR, JUDGE

//TRUE COPY//

K. PADMANABHAN NAIR ,J.

F.A.O.No.230 of 2005

Dated, this the 18th day of December, 2007

JUDGMENT

Respondents in I.A.Nos.829/2005 and 984/2005 in A.S.No.162/2004 on the file of the Additional Subordinate Judge's Court, Irinjalakuda are the appellants in this appeal. They were defendants 4 and 5 in O.S.No.745/2002 on the file of the Munsiff Court, Kodungalloor. Trial court decreed the suit in part directing the defendants to remove the obstruction caused by them in a pathway. A prohibitory injunction decree was also granted. There was a connected suit as O.S.No.709/2002 which was dismissed. Challenging the decree passed in O.S.No.745/2002 the appellants filed A.S.No.162/2004. In the appeal the lower appellate court directed the parties to maintain status quo. In the appeal respondents herein filed I.A.Nos.829/2005 and 984/2005 alleging that the appellants violated the interim order of status quo and as such an interim mandatory injunction may be issued against them. Lower appellate court disposed of both the applications and directed the appellants to restore the disputed pathway as shown in Ext.C1(a) plan by removing the granite boulders and coconut stumps placed by them, failing which the respondents were given right to restore the pathway and recover costs from the appellants. Challenging the interim order this appeal is filed.

2. Appeal was admitted on 5.12.2005. This Court granted an interim

stay of the interim mandatory direction issued by the lower appellate court. That order is still in force. After hearing both sides I am of the view that it is only just and proper that the lower appellate court hears and dispose of the appeal itself instead of this Court considering this appeal on merits. So I am of the view that the appeal can be disposed of maintaining the interim order passed by this Court on 5.12.2005 for another six months and also by directing both sides to maintain status quo as on the date of filing of this appeal and not to do any act so as to alter the same.

In the result, appeal is disposed of in the following terms. The operation of the interim order passed by this Court on 5.12.2005 in I..A.No.3017/2005 is extended by another six months. Both parties are directed to maintain status quo as on 5.12.2005 and not to commit any act to alter the same till the disposal of the appeal by the lower appellate court. Lower appellate court is directed to hear and dispose of the appeal as expeditiously as possible, at any rate, within a period of six months from the date of receipt of a copy of this judgment.

K. PADMANABHAN NAIR,
JUDGE.

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